PP

v.

**TEO KOK HING & ORS;
AL RAJHI BANKING & INVESTMENT CORPORATION
(MALAYSIA) BHD (PROPOSED INTERVENER)**

HIGH COURT MALAYA, KUALA LUMPUR
AMELIA TEE ABDULLAH J
[CRIMINAL APPLICATION NO: 44-146-08-2012]
4 MARCH 2014

CIVIL PROCEDURE: *Intervener - Application for - Whether proposed intervener interested third party - Whether denied rights to show cause - Whether leave to intervene granted*

CIVIL PROCEDURE: *Functus officio - Principles of - Setting aside decision of High Court - Whether court reviewed its own decision - Whether forfeiture order amounted to final order - Whether proposed intervener should have appealed against forfeiture order - Whether court functus officio*

Al Rajhi Banking & Investment Corporation (Malaysia) Bhd ('proposed intervener') sought leave to intervene and to set aside the decision of the High Court. The Public Prosecutor ('PP') applied under the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 ('AMLATFA') for the forfeiture to the Government of Malaysia, a sum of RM310,000 standing in the account of Romeo Marketing Sdn Bhd. Consequently, the court caused to be published, a notice in the gazette, calling upon any third party who claimed to have any interest in the property to attend before the court to show cause why the property should not be forfeited. When neither the respondents on whom the notice of application was served, nor any third parties had attended the court to make any claim to the subject property, the court allowed the PP's application ('the HC decision'). The proposed intervener herein subsequently filed a notice of application for, *inter alia*, leave to intervene in the proceedings, to set aside the HC decision and be given leave to be heard in accordance with s. 61(1) of the AMLATFA.

Held (dismissing application):

(1) The written submissions tendered by the proposed intervener contained certain statements which were not only inaccurate but which could be said to be wrong, misleading and mischievous. The written submissions was designed to show that notwithstanding the fact that the applicant was present on the day of the hearing of the

application, he was denied the right to show cause as to why the property should not be forfeited. It was only after the court had disposed of the case that a representative from the proposed intervener had arrived at the court. As such, the submissions of the proposed intervener, insofar as they sought to show that the court had unfairly deprived them of an opportunity to show cause why the property should not be forfeited, was both mischievous and made *mala fide*. (paras 14-16)

(2) The court, upon making the order of forfeiture on 27 November 2012, would be *functus officio* and it would not be open for the court to review its own decision. The decision of the court was a final decision which disposed of the rights of the parties, which decision was only appealable to the Court of Appeal. In light of the fact that the Court of Appeal had dismissed the proposed intervener's application for leave to file its notice of appeal out of time, the present application for leave to intervene and to set aside the decision of the court was another attempt to appeal against the said decision. (para 20)

Case(s) referred to:

Soong Chee Kong v. PP And Ng Soon Sum And Anor v. PP [1950] 1 LNS 84 HC ***(refd)***

Tang Kheng Teong & Anor v. PP [1992] 2 CLJ 1273; [1992] 3 CLJ (Rep) 672 HC ***(refd)***

Legislation referred to:

Anti-Money Laundering and Anti-Terrorism Financing Act 2001, ss. 56, 61(2)

Courts of Judicature Act 1964, s. 3

Criminal Procedure Code, s. 278

For the prosecution - Thangavelu Suppiah; DPP

For the proposed intervener - Abdullah Az-Zubayr; M/s Zulpadli & Edham

Reported by Sandra Gabriel

JUDGMENT

Amelia Tee Abdullah J:

[1] *Vide* a notice of application dated 29 August 2012, the proposed intervener, Al Rajhi Banking & Investment Corporation (Malaysia) Bhd, had *inter alia* sought leave to intervene as an interested third party, leave to set aside the decision of the High Court made on 25 July 2012 in Miscellaneous Criminal Application No. 44-31-01-2012 which had

allowed the Public Prosecutor's application to forfeit a sum of RM310,000 standing in the current account of Romeo Marketing Sdn Bhd, and leave for the proposed intervener to be heard.

[2] On 27 November 2012, after hearing submissions from both parties, the court had dismissed the application of the proposed intervener. Being dissatisfied with the said order dismissing its application, the proposed intervener has now lodged an appeal to the Court of Appeal against the court's decision made on 27 November 2012.

Background

Miscellaneous Criminal Application No: 44-31-01-2012

[3] Miscellaneous Criminal Application No: 44-31-01-2012 has specific relevance and connection with the present application by the proposed intervener, Al Rajhi Banking & Investment Corporation (Malaysia) Bhd. In that case, the application was made by the Public Prosecutor under ss. 56 and 61 of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 ("AMLATFA") for the forfeiture to the government of Malaysia of a sum of RM310,000 standing in the account of Romeo Marketing Sdn Bhd, the third respondent in that case.

[4] In accordance with the provisions of s. 61(2) of AMLATFA, the court had caused to be published a notice in the gazette calling upon any third party who claims to have any interest in the property to attend before the court to show cause why the property shall not be forfeited. The place, time and date as specified in the gazette was "the High Court 3, Kuala Lumpur on 14 June 2012 at 8.30am". The notice was duly gazetted *vide* P.U.(B) 183 on 16 May 2012.

[5] Court records reveal that on 14 June 2012, neither the respondents on whom the notice of application was served, nor any third parties, had attended at the court to make any claim to the subject property. And on 25 July 2012, the court had allowed the Public Prosecutor's application to forfeit the sum of RM310,000 seized on 22 February 2011 and any increase to that amount standing in current account no. 12900-1080652488 belonging to the third respondent, Romeo Marketing Sdn Bhd, at Al-Rajhi Bank, Kota Damansara branch.

The Present Application

Miscellaneous Criminal Application No: 44-146-08-2012

[6] Al-Rajhi Banking & Investment Corporation (Malaysia) Bhd, which has described itself as the proposed intervener ("pencelah yang di cadangkan") had filed a notice of application dated 29 August 2012 seeking an order *inter alia* for:

(i) Leave for the proposed intervener to intervene in this proceedings ("dalam permohonan ini");

(ii) Leave for the proposed intervener to set aside the decision of YA Amelia Tee Hong Geok Abdullah on 25 July 2012 in Miscellaneous Criminal Application No: 44-31-01-2012 which allowed the Public Prosecutor's application to forfeit the sum of RM310,000 in the current account of Romeo Marketing Sdn Bhd; and

(iii) That the proposed intervener, as a *bona fide* third party, be given leave to be heard in accordance with s. 61(2) of AMLATFA.

[7] The court notes that there are various irregularities in the application which was filed by the proposed intervener. Notwithstanding that the applicant in this case is actually the proposed intervener, nevertheless they have described the Public Prosecutor as the applicant in the notice of application. The respondents are described as Teo Kok Hing, Kong Choy Ying and Romeo Marketing Sdn Bhd. The court notes that the description of the Public Prosecutor as the "pemohon" or applicant causes no small amount of confusion when it is further stated that it is the:

> Pemohon/Pihak Ketiga yang mempunyai kepentingan iaitu Al-Rajhi Banking & Investment Corporation (Malaysia) Bhd, akan memohon kepada Mahkamah yang Mulia ini bagi suatu Perintah ...

[8] On 27 November 2012 the court after hearing the submissions of the learned Deputy Public Prosecutor, Thangavelu Suppiah, and Encik Abdullah Az-Zubayr from Messrs Zulpadli & Edham for the proposed intervener, had dismissed the said application.

Submissions Of The Deputy Public Prosecutor

[9] Whilst the learned Deputy Public Prosecutor had, in his written submissions, touched on a number of issues, however the germane issue relevant to the court's decision relates to the issue of whether the court is *functus officio* when it made the order of forfeiture in Miscellaneous Criminal Application No: 44-31-01-2012.

[10] Section 3 of the Courts of Judicature Act 1964 defines "decision" as:

> "decision" means any judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties.

The order of forfeiture made on 27 November 2012 by the court would therefore fall within the meaning of "decision" in s. 3 as it is not a ruling but is an order which finally disposes of the rights of the parties in relation to the subject property which was ordered to be forfeited to the government of Malaysia.

The Proposed Intervener's Submissions

[11] The crux of the argument of the proposed intervener is that all forfeitures of property exercised by courts are essentially civil forfeitures regardless of whether it is a civil court or a criminal court which is exercising the function. For this proposition, learned counsel for the proposed intervener has cited the cases of *Tang Kheng Teong & Anor v. PP* [1992] 2 CLJ 1273; [1992] 3 CLJ (Rep) 672 and *Soong Chee Kong v. Public Prosecutor And Ng Soon Sum And Anor v. Public Prosecutor* [1950] 1 LNS 84; [1951] 17 MLJ 5.

[12] Learned counsel for the proposed intervener has submitted that the applicant proposed intervener had, at all material times, denied knowledge of the application for forfeiture by the Public Prosecutor. Paragraphs 12 of their written submissions reads as follows:

> 12. Be that as it may, the applicant was present on the day the forfeiture order was made however was denied the right to show cause as to why the property should not be forfeited.

[13] The proposed intervener thus submitted that it is an interested party and had a legitimate claim towards the property and could resort to civil procedure to avail itself of its right. It was further submitted that the order made on 25 July 2012 was not a final judgment within s. 278 of the Criminal Procedure Code but that it was merely an ancillary order made on the presumption that it may be rebutted if the person who absconds is arrested, charged and tried.

Findings And Decision

[14] From the outset, the court notes that the written submissions tendered by counsel for the proposed intervener contains certain statements which were not only inaccurate but which can be said to be wrong, misleading and mischievous. The court notes that para. 12 of the said written submissions was designed to show that notwithstanding the fact that the applicant was present on the day of the hearing of the application, he was denied the right to show cause as to why the property should not be forfeited. The above could not be further from the truth.

[15] The court notes that Tunku Saiful Adli Tunku Nizam had, at para. (f) of his affidavit-in-support (encl. 3), affirmed that the proposed intervener was late in arriving to court on the day of the hearing of the application. The court finds it as a fact that the proposed intervener was absent at the time the case was called, heard and subsequently disposed off with the making of an order of forfeiture. It was only after the court had disposed of the case and risen for the day that a representative from the proposed intervener had arrived at the court.

[16] In the circumstances, the court is of the view that the submissions of the proposed intervener insofar as they sought to show that the court had unfairly deprived the proposed intervener of an opportunity to show cause why the property should not be forfeited was both mischievous and made *mala fide*.

[17] The court is of the considered view that upon making the order of forfeiture on 27 November 2012, it would then be *functus officio*. It would not be open for the court to review its own decision. As such, the court finds that the application filed by the proposed intervener in this case which sought *inter alia* for leave for the proposed intervener to intervene, leave to set aside the decision of the judge who heard and disposed of the 44-31-01-2012 application, and leave for the proposed intervener to be heard in accordance with s. 61(2) of AMLATFA, would be tantamount to asking the court to reopen a case which had been decided upon and disposed off on 25 July 2012.

[18] The court is of the considered view that the application made by the proposed intervener is in the nature of an attempt to reopen a case (Miscellaneous Criminal Application No: 44-31-01-2012) which had been disposed off and closed. Any dissatisfaction with the decision of the court in that case should be appealed to the Court of Appeal and not by way of another Miscellaneous Criminal Application (44-146-08-2012) seeking leave to intervene and leave to set aside the order of the judge in the earlier case.

[19] It is noteworthy that in respect of the earlier case (Miscellaneous Criminal Application No: 44-31-01-2012), the proposed intervener, Al-Rajhi Banking & Investment Corporation Sdn Bhd, had applied to the Court of Appeal for leave to file an appeal against the High Court's decision made on 25 July 2012 out of time. However, the application was dismissed by the Court of Appeal on 24 September 2012.

Conclusion

[20] In light of the fact that the decision of the court made on 25 July 2012 is a final decision which disposes of the rights of the parties, which decision is only appealable to the Court of Appeal, and in light of the

A fact that the Court of Appeal had dismissed the proposed intervener's application for leave to file its notice of appeal out of time, the court is of the considered view that the present application for leave to intervene and to set aside the decision of the court made on 25 July 2012 is but another attempt to appeal against the said decision.

B

[21] Accordingly and for the reasons afore stated, the court had dismissed the application of the proposed intervener in this case.

C

D

E

F

G

H

I